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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 20131-0037]

RIN 0648-BK79

Pacific Island Fisheries; Rebuilding Plan for the American Samoa Bottomfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in American Samoa. This action is necessary to end overfishing and rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: NMFS must receive comments by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0006, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0006, in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd, Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ``N/A'' in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) prepared Amendment 5 to the Fishery Ecosystem Plan for the American Samoa Archipelago (FEP), which includes a draft environmental assessment (EA) and

Regulatory Impact Review. Copies of Amendment 5 and other supporting documents are available at www.regulations.gov, or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Heather Cronin, NMFS PIR Sustainable Fisheries, 808-725-5179.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the American Samoa bottomfish fishery under the FEP and implementing regulations. The fishery primarily targets and harvests a complex of 11 bottomfish management unit species (BMUS), which includes emperors, snappers, groupers, and jacks. Bottomfish are typically harvested in deep waters, though some species are caught over reefs at shallower depths. Most (85 percent) bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters (i.e., the U.S Exclusive Economic Zone) around offshore banks. Fishing for bottomfish in American Samoa primarily occurs within 20 mi (32.2 km) from shore using aluminum catamarans less than 32 ft (9.7 m) long, known locally as alia.

The Council and NMFS only have the authority to develop and implement fishery management regulations in Federal waters, and the American Samoa Government has the

authority to implement fishery management measures in territorial waters. Bottomfish fishermen in American Samoa are not required to obtain a Federal permit to fish for BMUS or to report their BMUS catch to NMFS. The American Samoa Department of Marine and Wildlife Resources collects fishery catch information from fishermen through voluntary creel surveys, and commercial sales data from the mandatory commercial receipt book program. There are no territorial permitting requirements to fish for bottomfish in territorial waters.

The fishery is relatively small, with fewer than 20 participants in the fishery (86 FR 3028, January 14, 2021), and primarily non-commercial, but it is still of importance to the local economy, and from social, cultural, and food security standpoints. In the past 20 years, the estimated total catch has varied from a high of 42,301 lb (19,187 kg) in 2001 to a low of 7,688 lb (3,487 kg) in 2012. The average catch from 2018-2020 was 12,687 lb (5,755 kg), with 965 lb (438 kg) attributed to the commercial fishery and the 11,722 lb (5,317 kg) attributed to the non-commercial sector. In 2020, the commercial price was \$3.48/lb (\$7.67/kg) and the estimated fishery revenue was \$4,018.

On February 10, 2020, NMFS notified the Council that the American Samoa bottomfish stock complex was overfished

and subject to overfishing (85 FR 26940, May 6, 2020). Consistent with section 304(e) of the Magnuson-Stevens Act and implementing regulations at 50 CFR 600.310(j), the Council must prepare, and NMFS must implement, a rebuilding plan within two years of the notification. The rebuilding plan must specify the timeframe for rebuilding the stock complex's biomass to a level that is capable of producing maximum sustainable yield (B_{MSY}). The rebuilding timeframe must be as short as possible, taking into account the status and biology of the overfished stock, the needs of fishing communities, and the interaction of the overfished stock of fish within the marine ecosystem and cannot exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. The rebuilding must also have at least a 50 percent probability of attaining the B_{MSY} , where such probabilities can be calculated.

If approved, Amendment 5 would implement a rebuilding plan for the American Samoa bottomfish stock complex that consists of an ACL and two AMs. We would set the ACL 5,000 lb (2,268 kg) starting in 2022. Because NMFS is obligated to manage the stock throughout its range, and the complex

exists in both territorial and Federal waters, we would count harvests from territorial and Federal waters toward the ACL. Note, however, that existing data collection programs do not differentiate catch from territorial versus Federal waters. The fishing year is the calendar year.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. At this time, the American Samoan Government does not have regulations in place to implement a complementary closure in territorial waters at the same time as a Federal closure. Therefore, NMFS expects there could continue to be fishing in territorial waters even after a closure of the bottomfish fishery in Federal waters, and this could offset the potential conservation benefits of restricting bottomfish harvest in Federal waters. As an additional AM, if the total annual catch (which includes catch from both Federal and territorial waters) exceeds the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of American Samoa implement a coordinated management regime to ensure that the catch in both Federal and territorial waters is maintained at levels that allow the stock to rebuild. The rebuilding plan would remain in place until NMFS determines that the stock

complex is rebuilt, which is expected to take 10 years if catches are maintained at the specified level. This rebuilding plan was selected because it allows for the least disruption to the fishing community and minimizes negative socio-economic impacts while still rebuilding the stock complex within the 10-year period required by the Magnuson-Stevens Act. NMFS and the Council would review the rebuilding plan routinely every two years and modify it, as necessary, per section 304(e) (7) of the Magnuson-Stevens Act.

NMFS must receive comments on this proposed rule by the date provided in the **DATES** section. NMFS is also soliciting comments on proposed Amendment 5; see the Notice of Availability (NOA) published on Date (FR citation). NMFS must receive comments on the NOA by Date. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. NMFS will consider comments on both the NOA and this proposed rule in our decision to approve, disapprove, or partially approve Amendment 5. NMFS specifically invites public comments that address the impact of the proposed rule and Amendment 5 on cultural fishing in American Samoa.

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

The American Samoa bottomfish fishery is primarily a non-commercial fishery and is relatively small, with fewer than 20 participants, many of whom also participate in other fisheries such as troll and small-scale longline. Since 2011, percent of catch sold ranged from 2.9 percent in 2011 to 15.4 percent in 2014. In 2020, fishermen sold 3.2 percent of bottomfish catch. Fishing for bottomfish primarily occurs using aluminum alia catamarans less than

32 ft (9.7 m) in length that are outfitted with outboard engines and wooden hand reels that fishermen use for both trolling and bottomfish fishing. The demand for bottomfish on American Samoa varies depending on the need for fish at community events, and alia fishermen may switch to bottomfish fishing during periods when target longline catches or prices are low. Between 2018 and 2020, the bottomfish catch averaged 12,587 lb (5,709 kg) with 7.2 percent sold, with remaining catch likely to be non-commercial catch, kept for personal consumption or shared within the community. In 2020, the most recent year for which catch data are available, the total estimated annual catch of American Samoa BMUS was 9,592 lb (4,350 kg), with commercial catch an estimated 307 lb (139 kg). Using the average bottomfish price in 2020 of \$3.48/lb (\$7.67/kg), 2020 bottomfish revenue is estimated to be \$1,067. However, the 2020 price for bottomfish was lower than the average prices for 2017 (\$5.11), 2018 (\$4.25), 2019 (\$4.24). Using the most recent 3-year average catch of bottomfish (12,587 lb or 5,709 kg) and the 2020 bottomfish price per pound (\$3.48/lb or \$7.67/kg), NMFS estimates the expected annual total revenue of the fishery to be \$3,179. Under this scenario, the expected annual revenue for each of the 20 participants of this fishery from commercial bottomfish

catch is \$159. If NMFS were to apply a higher price to the analyses, estimated revenues and revenue losses would be higher.

Under the proposed action, with an ACL of 5,000 lb (2,269 kg) and an in-season AM to close Federal waters upon reaching the ACL for the bottomfish fishery in American Samoa, NMFS expects the fishery to exceed the ACL within the first half of the year. The reduction in catch because of this action could be offset if fishing effort in Federal waters relocates to territorial waters (assuming that the American Samoa government does not implement complementary measures in territorial waters). Without complementary management in place, NMFS expects the fishery to land 11,534 lb (5,231 kg) or more in 2022, which would exceed the ACL. As a result, Federal waters would close. However, even after a closure of Federal waters, NMFS expects the fishery to land 10,784 lb (4,891 kg) or more from territorial waters. The expected catch would depend on the level of fishing activity transferring to territorial waters, once the in-season closure occurs. If all fishing effort that would have been conducted in Federal waters moves to territorial waters, catch could be closer to levels when the fishery had not been constrained by a limit. However, if post-closure fishing effort in Federal

waters does not move to territorial waters, then implementing the proposed action would result in a potential reduction of 1,153 lb (523 kg) in catch in 2022 and 1,903 lb (863 kg) for every subsequent years of the rebuilding plan compared to the status quo. The estimated fleetwide bottomfish revenue during the first year of implementing the rebuilding plan could be as low as \$2,888. Under this scenario, the 20 participants would earn approximately \$144 each. For subsequent years, fleetwide revenue could be as low as \$2,702 (\$135 per participant). These would represent reduction in bottomfish revenue of \$15 in 2022 and \$24 for subsequent years, compared to the status quo. Fishermen could offset loss in revenue by selling some of their catch that had been intended to be retained or shared (non-commercial catch) or by relocating fishing effort to territorial waters which are likely to remain open.

The fishery is not expected to substantially change the way it fishes with respect to fishing gear, fishing effort, participation, or intensity, but may change slightly with respect to total catch and areas fished, with the fishermen who would normally choose to fish in Federal waters being affected more adversely. Larger impacts would occur if the American Samoa government implemented a

complementary closure in territorial waters with expected fleetwide catch of 5,000 lb the first year (2,269 kg) and no bottomfish catch during subsequent years until a coordinated management approach is developed that ensures catch in both Federal and territorial waters can be maintained at levels that allow the stock to rebuild. While limiting total bottomfish catches annually may result in short-term economic impacts to fishery participants, rebuilding stock biomass to B_{MSY} is expected to increase the exploitable biomass which, in turn, is expected to provide for long-term sustainability of fishery resources while allowing fishery participants to continue to benefit from their use.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels subject to the proposed action are small entities, i.e., they are

engaged in the business of finfish harvesting (NAICS code 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate adverse economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR 665

Administrative practice and procedure, American Samoa,
Bottomfish, Fisheries, Fishing, Pacific Islands.

(Authority: 16 U.S.C. 1801 et seq.)

Dated: January 31, 2022.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes
to amend 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665
continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Revise § 665.103 to read as follows:

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for American Samoa bottomfish MUS or ECS using gear prohibited under § 665.104.

(b) Fish for or possess any American Samoa Bottomfish MUS as defined in § 665.101 after a closure of the fishery in violation of § 665.106.

(c) Sell or offer for sale any American Samoa Bottomfish MUS as defined in § 665.101 after a closure of the fishery in violation of § 665.106.

3. Add § 665.106 to read as follows:

§ 665.106 American Samoa Annual Catch Limits (ACL).

(a) In accordance with § 665.4, the ACL for American Samoa bottomfish MUS is 5,000 lb.

(b) When NMFS projects the ACL will be reached, the Regional Administrator shall publish a document to that effect in the *Federal Register* and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection

at the Office of the Federal Register, through the end of the fishing year in which the catch limit is reached.

(c) If the ACL is exceeded in any fishing year, the Regional Administrator shall publish a document to that effect in the *Federal Register* and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register. The fishery will remain closed until such time that a coordinated approach to management is developed that ensures catch in both Federal and territorial waters can be maintained at levels that allow the stock to rebuild or the rebuilding plan is modified based on the best scientific information available.

(d) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, fishing for and possession of American Samoa bottomfish MUS is prohibited in the American Samoa fishery management area, except as otherwise authorized by law.

(e) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, the sale, offering for sale, and purchase of any American Samoa

bottomfish MUS caught in the American Samoa fishery
management area is prohibited.

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